

10/22/2004 16:08 BellSouth Intellectual Property → 97709510933 NO. 404 D002  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT

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OCT 28 2004

Group Art Unit: 2665

Examiner: Clemence S. Han Technology Center 2600

Docket No. 190252-1250

In Re Application of:

Chewning et al

Serial No.: 09/649,478

Filed: August 28, 2000

For: Method and Systems of Network Management

DECLARATION OF  
WARD M. CHEWNING III, FARIBORZ BEHI, AND MARTIN ALAN COOPER  
PURSUANT TO 37 C.F.R. §1.131

We, Ward M. Chewning III, Fariborz Behi, and Martin Alan Cooper hereby declare that:

- 1) We are engineers employed by BellSouth Telecommunications, Inc.
- 2) We conceived the claimed invention embodied in the above-identified patent application.
- 3) The claimed invention is directed toward a system and method for the provisioning and management of digital subscriber line services such as asymmetric digital subscriber line services.

4) We are advised that the U.S. Patent Office has rejected certain claims presently pending in the above-identified patent application based upon the teachings (either in whole, or in part) of U.S. Pat. No. 6,597,689 to Chiu *et al* (hereinafter, "Chiu"), U.S. Pat. No. 6,166,895 to Dziedzic (hereinafter, "Dziedzic"), and U.S. Pat. No. 6,507,870 to Yokell (hereinafter, "Yokell"). We are further advised that the earliest priority date of the Chiu, Dziedzic, and Yokell patents is December 30, 1998.

5) We are further advised that if we can show reduction to practice before the December 30, 1998 priority date of the Chiu patent, then the Chiu patent and any later filed patents cannot be used to reject the claims of the above-referenced patent application.

6) With this understanding, we contend that we did in fact actually reduce our claimed invention to practice, as embodied in the claims of the above-referenced patent application, before December 30, 1998. A working computer program embodying the claimed invention was completed and was rolled out for release before said date.

7) As evidence that the above-identified claimed invention was reduced to practice prior to December 30, 1998, please refer to Tab A of the Affidavit filed April 5, 2004 (hereinafter, "the previous Affidavit") which is incorporated in its entirety by reference.

8) Tab B of the previous Affidavit includes a copy of the provisional patent application to which this nonprovisional utility application claims priority. The provisional patent application entitled "ADSL Network Management System" was filed August 27, 1999 and has since been designated with serial number 60/151,120.

9) The provisional patent application provides a complete User's Guide of one implementation of the present claimed invention.

10) Tab A of the previous Affidavit includes a document dated prior to the December 30, 1998 priority date. This document provides the requirements that the document provided in the provisional patent application meets, thus affirmatively establishing a reduction to practice prior to December 30, 1998.

11) As evidence of a reduction to practice prior to December 30, 1998, please see Tabs C-F of the previous Affidavit.

12) As provided in the provisional patent application (Tab A of the previous Affidavit), embodiments of the present claimed invention were implemented in the "NMS" products. In particular, Release 1.0 was an early implementation. Tab C of the previous Affidavit includes a document dated prior to December 30, 1998, and entitled "Project Viewer - NMS\_R1." This document provides a time-line for every aspect of the NMS project illustrating the progress made on and/or forecasted for the development of NMS\_R1. A list of tasks is provided in each project schedule document, along with an expected duration, scheduled start date, scheduled finish date, responsible party, and status report. The product, "NMS\_R1," includes the functionality embodied in the present claimed invention. Additionally, the document in Tab C of the previous Affidavit provides a forecasted date for the subsequent releases of NMS Release 1.1 and 2.0. The User's Guide for Release 2.0 was filed with the provisional patent application.

13) Tab D of the previous Affidavit illustrates an analysis of the NMS deployment architecture and sizing analysis dated prior to December 30, 1998.

14) Tab E of the previous Affidavit illustrates the expenditures for the NMS project for 1997 and 1998. In particular, it provides the hours worked by each engineer on the project.

15) Tab F of the previous Affidavit discloses the NMS\_R1 testing evaluation illustrating the results of a reduction to practice of the claimed invention prior to release of the final implementation of release 1.0. We can attest to this report being written prior to December 30, 1998.

16) We submit that this testing evaluation serves as an illustration of an actual reduction to practice. In this regard, we understand that an invention is "reduced to practice" if a working model has been created. We are further advised that our claimed invention was "reduced to practice" if a working model/prototype was constructed that embodied the principal features of the invention (as defined by the claims of the patent application), even though all "bugs" or non-claimed features may not have been fully perfected.

17) Collectively, these documents and the sworn statements contained herein illustrate actual reduction to practice of all pending claims of the present application.

18) We are advised that, in accordance with accepted procedure, any dates prior to December 30, 1998 have been redacted from the documents in Tabs A and C-F of the previous Affidavit prior to submission to the U.S. Patent & Trademark Office.

We hereby declare that all statements made herein are of our own knowledge and are true, and that all statements are made on information and belief and are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

9/20/04

Date

9/20/04

Date

Sept 20, 2004

Date

Ward M. Chevning III

Ward M. Chevning III

Fariborz Behi

Fariborz Behi

Martin Alan Cooper

Martin Alan Cooper

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